IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

CRL.A.No. 778 of 2000()

CC.27/2000 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY .
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APPELLANT: COMPLAINANT

T.P.DINESAN, S/O. MUKUNDAN,
KIZHAKKA MANARATH HOUSE,
PANNIYANOOR P.O.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.C.P.PEETHAMBARAN
SRI.T.N.SURESH
SRI.T.K.ANIRUDHAN
SRI.B.R.VIJAYAMOHAN
SMT.PRAJANI RAJAN

RESPONDENTS: ACCUSED & FORMAL PARTY
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1. M.PAVITHRAN, MANIYAMBATH HOUSE,
AZHIYOOR P.O., BADAGARA TALUK.

2. STATE OF KERALA TO BE REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.R.SURENDRAN
PUBLIC PROSECUTOR SRI.AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.778 of 2000

Dated this the 31st day of October, 2007

JUDGMENT

The appellant is the complainant in C.C.No.27/00 in the file of Additional Chief Judicial Magistrate Court, Thalassery with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The complainant's case is that the accused borrowed a sum of Rs.75,000/- from the complainant on 10.8.1999 and towards discharge of the above liability issued the impugned cheque dated 30.12.1999 which when presented got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2, Exts. P1 to P7, DWs' 1 and 2 and Exts. D1 to D4.

4. PW1, the accountant of the bank, has testified with respect to the execution of the cheque and dishonour of the same. PW2, the complainant, has testified that the cheque was dishonoured for want of funds in the account of the accused.

5. It is the case set up by the defence that the very genesis of the complainant is false as the complainant has set up a case that the amount was borrowed from his house by name Kizhakke Manarath house at Panniyoor whereas according to the accused the complainant has no such address and that he was just a binami to one Palakkandy Chandran to whom he had handed over two cheques as surety to one Shamsudheen who subsequently committed suicide. It is his case that those cheques were misused by Chandran and by misusing one cheque the complainant has got the proceedings initiated under Section 138 of the Negotiable Instruments Act. It is contended that the complainant has no his residence at Panniyoor and that he is residing at New Mahe as can be seen from Ext. D4 voters list. Ext. D1 is the returned postal cover wherein DW2, the postman, has endorsed as not known. It was put in the cross examination of DW1, the accused, that the above house at Panniyoor is owned by one Nani for the last about 6 years. DW2 has testified as to the fact that he made enquiries at two houses nearby and it was then he made the above endorsement. It was suggested in the cross examination that he has colluded with the complainant.

But, I find that no action has been initiated against the above postman. The contention is that in fact it is not DW2 who has made the endorsement. I find that the above suggestion was not put to DW2 in the cross examination.

6. I find that the court below has also relied on the fact that nothing has been brought out to show that the complainant has got sufficient source to lend Rs.75,000/- which has to be treated as a substantial amount in 1991. It is specifically put to PW2 the complainant that he is not having the financial capacity even to manage Rs.75/-. The version of PW2 is that he is doing a wholesale business in fish and that for the same no licence is required. In the circumstances, the specific defence is that the complainant is a binami of Chandran. The above contention that the complainant has no source is relevant. Nothing has been produced to establish even prima facie that the complainant is a person having sufficient means to lend a sum of Rs.75,000/-.

7. The contention that Ext. D1 postal cover and Ext. D4 voters list are not contemporary documents and hence the same cannot be relied on to rebut the presumptions. I find that the contention cannot be sustained in view of the fact that according

to the accused he came to know about the proceedings initiated against him only as per the lawyer notice issued and for that he has sent a reply also. The contention that the accused has no such case in the other case filed by Chandran and in which the accused has been admittedly convicted I find that it cannot be treated as a clinching circumstance as it is also possible, as pointed out by the counsel for the respondent that he would not have anticipated that another proceedings would launched against him through a stranger. In view of the fact and considering the evidence as a whole, I find that no interference is called in the order of the court below acquitting the accused.

The criminal appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl